

# EXHIBIT E



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## Fed. Circ. Affirms Over 73% Of PTAB Decisions

By **Andrew Karpan**

Law360 (April 4, 2023, 7:21 PM EDT) -- The Federal Circuit has reviewed more than 1,100 appeals from the Patent Trial and Appeal Board and affirmed the board 73.2% of the time, according to the latest data compiled by Finnegan Henderson Farabow Garrett & Dunner patent attorneys.

As of the end of February, 1,116 patent board decisions had been appealed to the Federal Circuit since the board was created by the America Invents Act in 2012, and the affirmance rate remains about the **same as last year**, when there had been a cumulative 1,035 appeals, and about the same as it was **a year before then**, when there had been 987 appeals, according to the Finnegan Henderson attorneys who regularly post these numbers on the firm's website.

The firm posted the latest numbers Friday.

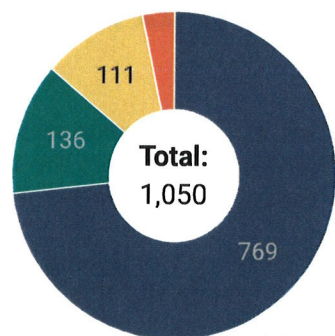
According to those numbers, judges on the Federal Circuit had affirmed the initial PTAB decision in a total of 817 appeals — 73.2% of the 1,116 appeals that the judges heard. Of the rest, 145, or 12.9%, were reversed, while 116, or 10.4%, received a mixed outcome. An additional 38 were dismissed on jurisdictional grounds, such as the court's **2021 decision** that Apple could not appeal a pair of PTAB losses because the tech giant had already settled with Qualcomm in district court.

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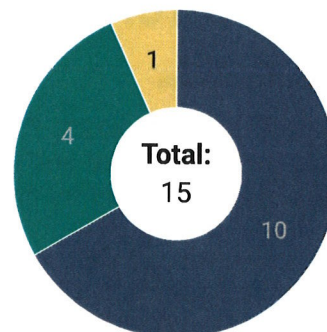
## PTAB Appeals Remain a Tough Sell at Federal Circuit

Since 2012, most of the Patent Trial and Appeal Board decisions that have been appealed to the Federal Circuit are affirmed. The total appeals below do not include appeals of covered business method reviews.

Every issue affirmed      Every issue reversed or remanded      Mixed outcome (partial affirmation)      Dismissed



Inter Partes Review (IPR)



Post Grant Review (PGR)

Source: Finnegan Henderson • Created with [Datawrapper](#)

"It is interesting that the Federal Circuit's affirmance rate in PTAB appeals has increased slightly in the past 10 months while the rate of summary affirmances continued to slightly decrease over time," Daniel Klodowski, a Finnegan lawyer involved in putting the numbers together, told Law360 in an email statement.

"But the court's affirmance rate appears generally in line with long-term trends, and we have not seen a significant departure in cumulative affirmance rates," he added.

Most of these appeals came from decisions that PTAB judges reached on petitions for inter partes review. Those are often filed within a year of an underlying patent infringement lawsuit and generally make some argument for why language used in newer patents is already covered by that found in older patents or other published material.

While significantly fewer, the number of appeals of PTAB rulings on post-grant review decisions landed more or less in the same range as the IPR decisions, with a total of 10 of them getting affirmed, another one getting a partial affirmance and the remaining four getting reversed. "Given the near-total decline" of the number of covered business method reviews appeals heard by the Federal Circuit, the lawyers at Finnegan say they are no longer looking at those. The **since-discontinued program** was used for challenging method patents related to the financial services industry

The attorneys at Finnegan also plugged in the latest numbers on how appeals from PTAB decisions

fared in avoiding getting somewhat-dreaded "Rule 36" affirmations, the one-line orders that end appeals without further comment from the judges and that have been the subject of numerous petitions aimed at the U.S. Supreme Court. The most recent **was rejected** by the justices last month.

Out of those 1,116 appeals, 480 involved Rule 36 orders, or 43%.

"The ratio of Rule 36 affirmances to issued decisions has trended steadily downward over time," reads the blog post from the Finnegan lawyers, a conclusion identical to the one they reported last year.

--Graphics by Ben Jay. Editing by Rich Mills.